

# City of Santa Barbara's LCP Update

## City Response to Comments Received by January 11, 2018, on the Public Review Draft Coastal LUP (November 2017)

### Chapter 4.1 Biological Resources: Environmentally Sensitive Habitat Areas (ESHAs), Wetlands, Creeks, and Buffers

- *ESHAs must be protected even if it's degraded. The ESHAs definition should clarify that every habitat that meets the definition of ESHAs qualifies as ESHAs even if degraded. Comments cite and attach the Fourth District Court of Appeal decision on Bolsa Chica Land Trust v. Superior Court, 71 Cal.App.4<sup>th</sup> 493 (1999).*

Response: In *Bolsa Chica Land Trust v. Superior Court* the court found that in deciding whether a particular areas is an ESHA within the meaning of Coastal Act Section 30107.5, viability of the habitat, among other matters, may be considered. However, once an area has been determined to be an ESHA, that area must be protected according to the policies protecting ESHA in the Coastal Act (including Section 30240) even if it is degraded or disturbed.

In following the guidance from the Bolsa Chica case, other court cases on this issue, CCC guidance, and input from CCC staff, Policy 4.1-41 has been amended to further clarify that in determining whether an area is an ESHA, viability and the function of the habitat should be considered. In some cases, this may include an evaluation of degradation and fragmentation of the habitat. For some habitats (like certain sage scrubs), what is considered rare by CDFG and CCC is a viable and functioning example of that habitat, not fragmented pieces of that habitat that aren't self-sustaining. That said, Policy 4.1-12 has been further clarified to state that habitat function should be based on conditions prior to any illegal removal or illegal disturbance. In addition, Policy 4.1-41 states that certain habitats like wetland, creek, and riparian areas are so rare and play such an important role in the environment so as to be considered ESHA, even if degraded.

Language has also been added to Policy 4.1-12 to further emphasize that once an area has been determined to be an ESHA, it shall be protected according to the ESHA protection policies of the Coastal LUP, even if it is degraded.

- *All the listed habitats that could be ESHA should be rephrased to say they are ESHA and ESHA areas should be mapped in Coastal LUP. All new ESHA determinations should then be added to the ESHA map.*

Response: CCC staff guidance on ESHA has repeatedly emphasized that ESHA determinations should be made on a case-by-case basis based on 1) site specific, on the ground conditions and 2) current lists of rare and sensitive species and habitats. Therefore, Chapter 4.1 cites types of habitat that are often considered ESHAs but does not provide a definitive list of ESHAs as what qualifies as ESHA could change.

Chapter 4.1 contains a map of potential vegetation communities to assist in determining when additional study of an area may be needed. The Chapter, however, does not have a detailed site specific map of ESHA areas. Habitats are constantly changing and it would be

hard for the City to specifically map every habitat area in the coastal zone with precision. There is also a concern that when you provide a specific map of ESHA, there is a tendency for people to then assume that any areas not mapped are not considered ESHA. However, ESHA determinations should ultimately not be based on a map, but on site specific, on the ground conditions and current lists of rare and sensitive species and habitats. The City does strive, though, to keep the map of potential vegetation communities as up to date as possible with new information as it becomes available.

- *General support for the proposed creek and riparian habitat protection policies and numerical buffers.*

Response: Noted.

- *ESHA and creek buffer reductions and fuel modification that could adversely affect ESHAs should only be allowed in takings of property cases and in those cases projects should have to document the takings with financial documents, etc.*

Response: Fuel modification for fire protection purposes for new development and substantial redevelopment is not allowed to be located in ESHAs pursuant to Policy 4.1-6.

Pursuant to Policy 4.1-18, reductions in minimum required buffers on constrained lots are only allowed in very specific situations and when a number of findings can be made, including findings that the development will not significantly degrade ESHAs, wetlands, creeks, or other coastal waters and the buffer is of sufficient size so as to avoid creek erosion hazards over the economic life of the development. If these findings cannot be made for the development and there could be adverse impacts to ESHAs, wetlands, or creeks, then the development is inconsistent with the Coastal LUP. In order to approve a development that is inconsistent with the Coastal LUP, the findings contained in Policy 1.2-4 would need to be made and those findings require extensive documentation of takings of property. Policy 1.2-4 has been amended to add additional detail about required documentation and findings for cases of property takings.

- *Created and restored ESHAs should require the same buffers as existing ESHAs.*

Response: Policy 4.1-30 has been amended to clarify that ESHAs created or restored to mitigate an impact to ESHA or to restore illegally removed ESHAs shall be subject to the minimum required buffers for ESHAs. It is only those areas that currently are not ESHA that are voluntarily restored in the future that would not require additional buffers in the future. One of the major impediments to voluntary restoration is the fear by landowners that the restoration will lead to more development restrictions on their property in the future. Policy 4.1-30 encourages an increase in the amount of ESHAs in the future by eliminating this landowner concern.

- *Mitigation of impacts to ESHAs, wetlands, and creeks should add the phrase "minimum of" in front of all ratios.*

Response: Policy 4.1-13 has been amended to incorporate this comment.

- *The Draft Coastal LUP should include a requirement that any creekside development projects prepare and implement a creek bank restoration plan, including planting and maintenance of native riparian habitat, to avoid and mitigate adverse project impacts.*

Response: The policies of Chapter 4.1 require planting of only native vegetation in ESHA, wetlands, creeks, and buffer areas and encourage restoration activities. Pursuant to Policy 4.1-18, new development and substantial development on constrained lots that require a reduction in the minimum required buffer may require restoration and other mitigation measures to avoid impacts to ESHA, wetlands, and creeks. However, the policies contained in Chapter 4.1 do not require creek bank restoration for every development on a creekside lot.

In order to require restoration, the City is required to demonstrate that the restoration is required to mitigate a specific adverse impact of a development and that the mitigation required is roughly proportional to the level of impact. Minimum required buffers are designed to protect ESHA, wetland, and creeks. Development that meets the minimum required buffers would, therefore, theoretically avoid adverse impacts to ESHA, wetlands, and creeks. It would, therefore, be hard for the City to require creek bank restoration for every development on a creekside lot as a blanket policy in the Coastal LUP, especially if minimum required buffers are met.

- *Bridge replacement projects should be required to remove barriers to steelhead migration.*

Response: Similar to the response above, a development would have to be shown to adversely impact a creek in order to establish a nexus to require removal of barriers and other restoration measures. Some bridge projects may not actually impact creeks. Removal of barriers to steelhead migration is strongly encouraged in Policy 4.1-26. Any bridge replacement project would also be evaluated on a case-by-case basis to see if there are opportunities to improve fish passage and if mitigation in the form of removal of barriers to fish migration is appropriate to the project. However, Chapter 4.1 does not require every bridge project to remove barriers to fish migration in every creek.

- *Channelization of creeks should be prohibited.*

Response: Policy 4.1-10 has been amended to clarify that non-intrusive bank stabilization methods shall be used to avoid channelization where feasible. Policy 4.1-9 still contains channelization as a potential allowed use in very limited circumstances in creeks. Policy 4.1-9 repeats the exact language of Coastal Act Section 30236. Certain Coastal Act sections are repeated as policies of the Coastal LUP.

- *The Lower Mission Creek Flood Control Project should not be characterized as restoration.*

Response: The Lower Mission Creek Flood Control Project has many purposes. Chapter 4.1 has been amended to simply reference the project without attempting to describe it in detail.

- *Require local genotypes for creek restoration projects.*

Response: Policy 4.1-19 has been amended to incorporate this comment.

## Chapter 4.1 Biological Resources: Sensitive Species

- *General support for nesting season protections for birds and bird-safe buildings design requirements.*

Response: Noted.

- *White-tailed kite nesting habitat must always be considered ESHA.*

Response: Chapter 4.1 has been amended to further clarify that if White-tailed kite start nesting in the City's Coastal Zone, the nesting habitat would be considered ESHA.

- *Southwestern pond turtle occurs in more areas than listed in the Coastal LUP.*

Response: Chapter 4.1 has been amended to incorporate this comment.

- *Critical Habitat (CH) designations for federally threatened western snowy plover need acknowledgement and the Coastal LUP should clarify the relationship between ESHA and CH. Sensitive species foraging habitat is as important as nesting. The sensitive resources at East Beach should be explicitly acknowledged and managed. There should be a coordinated planning effort for East Beach and the Andrée Clark Bird Refuge.*

Response: Chapter 4.1 has been amended to clarify the relationship between ESHA and areas designated by the USFWS as critical habitat for western snowy plover. ESHA determinations are based on site specific, on the ground conditions. While the critical habitat designation on East Beach gives us a screening level indication that western snowy plover could be using the site for foraging and roosting, the actual ESHA determination would be based on what is actually found at the beach. Additionally, the critical habitat designation for East Beach is based on its use by western snowy plover for overwintering foraging and roosting, not nesting. While nesting occurred once in 20015 at the Harbor sand spit, regular monitoring since then has not found western snowy plover present during the nesting season or nesting at the City of Santa Barbara Waterfront beaches. In consultations with CCC staff, they have confirmed that it would not be appropriate to call the entire critical habitat designated area ESHA at this time. However, if conditions change and nesting activities are found to regularly occur at the Waterfront beaches in the future, the nesting areas would be considered ESHAs.

Chapter 4.1 includes policies that protect western snowy plover and other sensitive species regardless of whether these areas are considered ESHA. Policies also protect the beach wrack that the plovers forage in. In addition, a new Policy (Policy 4.1-34) has been added that protects areas typically used for roosting by overwintering western snowy plover from certain development activities (special events, beach volley ball courts, etc.).

The Coastal LUP is the standard of review for issuance of Coastal Development Permits and a coordinated planning effort for East Beach and the Andrée Clark Bird Refuge is beyond the scope of the Draft Coastal LUP.

## Chapter 4.2 Water Quality

- *General support for the City's policies to regulate storm water discharges.*

Response: Noted.

- *Update Policy 4.2-10 to state that the City's Storm Water Management Program shall at a minimum be consistent with the State's current requirements.*

Response: The City's SWMP has been approved by the state (see Policy 4.2-21). When the SWMP is amended or reissued it will be subject to the State's requirements in effect at that time.

- *The water quality section should place a greater emphasis on the protection and restoration of riparian zones and wetlands to protect and enhance water quality.*

Response: Chapter 4.1 provides policies that address protection of riparian zones and wetlands.

- *Amend Policy 4.2-15 to prohibit cruise ships visiting Santa Barbara from discharging oil and hazardous waste.*

Response: Policy 4.2-15 has been amended to incorporate this comment.

- *Promotion of cruise ship visits to Santa Barbara should be conditioned upon compliance with Water Quality Policy 4.2-15.*

Response: Policy 3.2-3 has been amended to incorporate this comment.

- *The City should commit to repair or replace at least 1.5% of its sanitary sewer pipes per year and to reduce overflows to the maximum extent feasible.*

Response: Policy 4.2-17 has been amended to address maintenance and upgrade of the public sewer system with the goal of reducing public sewer overflows. The Coastal LUP is the standard of review for issuance of Coastal Development Permits and cannot commit the City to Capital Improvement Projects.

- *Update Policy 3.1-9 to include Channel Islands National Marine Sanctuary and regional Marine Protected Areas.*

Response: Policy 3.1-9 has been amended to incorporate this comment.

- *The Estuarine and Marine Resources section should also note 19 Marine Protected Areas.*

Response: Chapter 4.2 has been amended to incorporate this comment.

- *Table 4.2-3 should be updated.*

Response: Table 4.2-3 has been amended to incorporate this comment.

- *The Marine Debris section should be updated to include the City's additional efforts to limit marine debris.*

Response: Chapter 4.2 has been amended to incorporate this comment.

## **Chapter 6.1 Public Works & Energy Facilities: Water Supply**

- *Desalinization should be operated intermittently only in and following drought, not be considered a permanent part of the City's water supply.*

Response: Policy 6.1-11 has been amended to clarify that desalinization provides an intermittent water supply for the City, but desalinization is considered a permanent part of the City's water supply portfolio.

- *Support for the language in Policy 6.1-11 but the City should be committed to improving the desalination plant with state-of-the-art technology with any new CDP issued to update the facility.*

Response: Policy 6.1-11 has been amended to clarify that new coastal development permits to improve or expand the facility beyond the currently permitted 10,000 AF/year capacity should implement state-of-the-art technology.

- *City should commit to pursuing potable reuse of water to the maximum extent feasible (Policies 4.2-19 and 6.1-10).*

Response: The City recently evaluated the feasibility of indirect and direct potable reuse and the State of California is evaluating the feasibility of developing uniform water recycling criteria for direct potable reuse. Policy 6.1-10 encourages use of recycled water and "other new technologies as they become available," which could include potable reuse if the State Water Board develops criteria and the technology is feasible for the City.

## **Chapter 5.1 Hazards: Sea Level Rise**

- *General support for addressing sea level rise as a prominent hazard and for interim policies.*

Response: Noted.

- *Establish a timeline to incorporate the Sea Level Rise Adaptation Plan into the Coastal LUP.*

Response: The Sea Level Rise Adaptation Plan has been funded and work on the Plan is underway.

## Other Comments

- *The City should not rely on the term ‘feasibility’ in the Draft Coastal LUP; it should be removed or defined with mechanisms for determining feasibility.*

Response: The Coastal LUP uses the term “as feasible” to allow for a range of specific circumstances to be considered at the time of implementation on a case-by-case, site specific basis.

- *Policy 3.1-9 should be amended to also include the Channel Islands National Marine Sanctuary and regional Marine Protected Areas.*

Response: Policy 3.1-9 has been amended to incorporate this comment.

## Comments on Maps

- *Figure 4.1-1 Potential Vegetation Communities should include areas within 100-200 feet of the Coastal Zone.*

Response: Figure 4.1-1 has been amended to include potential vegetation communities within 100ft of the inland Coastal Zone boundary.

- *Figure 4.1-1 may be excluding areas of coastal bluff scrub/lemonade berry near SBCC.*

Response: Figure 4.1-1 has been amended to include scrub as depicted in the 2015 Santa Barbara City College Long-Range Development Plan.

- *Figure 4.1-2 Potential Wildlife and Special Status Species Areas should be amended to include additional sensitive species occurrences.*

Response: Figure 4.1-2 has been amended to remove specific occurrences of special status species due to low confidence in the accuracy of the dataset. This dataset changes all of the time and instead of amending the Coastal LUP constantly to keep up with listings, it would be more appropriate to consult the California Natural Diversity Database and the City’s Master Environmental Assessment during development review for the latest list of species sitings in an area.

- *Figure 4.1-4 Minimum Habitat Buffers has mislabeled creeks.*

Response: Figure 4.1-4 has been amended to include corrected creek labeling.

- *Figure 3.1-2 Key Public Access Parking Areas should indicate Alan Road as a beach access parking area, similar to Mesa Lane Stairs.*

Response: Figure 3.1-2 has been amended to include the first block of Alan Road as a Key Public Access Parking Area.

- *Figure 3.2-1 Recreation and Support Facilities should identify off-leash dog areas.*

Response: Figure 3.2-1 and Table 3.2-1 have been amended to identify permitted off-leash dog areas.